IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 812 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B.L. NAIK

Versus

DHYABHAI ASHABHAI PATEL

Appearance:

1. Criminal Appeal No. 812 of 1989

MR KI SHAH for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

MR CJ VIN for Respondent No. 1

MR RC KODEKAR, APP for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/06/2003

ORAL JUDGEMENT

#. The appellant herein is the original complainant and respondent No.1 herein is the accused of the case, being PFA No.11 of 1986. The accused was charged for the offence punishable under Section 7 of the Prevention of Food Adulteration Act. The appellant is the Food Inspector of Surat Municipal Corporation. On 23.1.1986 at about 6.30 in the morning, he collected the sample of milk from the shop of the accused situated at Khand Bazar, Lal Gate, Surat. The sample of the buffalo milk was obtained by him from the shop of the accused and after collecting the sample, the same was sent for analysis. As per the Analyst's report, the sample was found to have been adulterated as the percentage of fat was not as per the prescribed standard. Since the sample was found adulterated, the complainant filed the said complaint under the Prevention of Food Adulteration Act. Charge under the said Act was framed against the accused. Since the accused has not pleaded guilty,the trial proceeded against the accused. Learned Magistrate, after recording the evidence of the complainant, and, after considering the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973, came to the conclusion that the prosecution has failed to prove the case beyond doubt against the accused. Learned Magistrate came to the conclusion that the prosecution has failed to prove that the accused has committed the breach of Section 7 of the Act and under the circumstances, by order dated 9.12.1988, learned Magistrate acquitted the accused under Section 248(1) of the Code. The said order of acquittal is challenged at the instance of the Food Inspector of Surat Municipal Corporation.

#. Mr.P.F.Adhvaryu, learned advocate, has argued the matter on behalf of the appellant - original complainant. He has taken me through the evidence on record as well as he has taken me through the reasoning of the learned Magistrate. Mr.Naik, Food Inspector, in the cross examination, which has taken place on 14/12/1987, has stated that, at the relevant time, i.e. at the time of inspecting the shop of the accused, the complainant was not having the instrument for measuring milk. He also stated that the complainant was not having any instrument for the purpose of stirring milk. He also stated in the cross examination that the complainant has not put milk from one vessel to another vessel. It seems that since the complainant was not present on the relevant date, the Court has closed further cross examination of the said complainant. At the subsequent stage, having realised the difficulty about certain admissions made by the complainant during the cross examination, the Prosecutor

in charge gave the application at Exh.37 for recalling the complainant for further cross examination. However, learned Magistrate has rejected the said application. Learned Magistrate, after considering the arguments of both the sides, came to the conclusion that the complainant was required to remain present and since he has not remained present, he cannot be allowed now to enter into the witness box for the purpose of further cross examination. However, apart from the said aspect, it is not in dispute that, in the cross examination, the complainant himself has clearly stated that he was not having relevant instrument for the purpose of stirring milk. He has also fairly stated that he has not even tried to stir milk. The effect of the said evidence is that the sample was not made homogenous. Perhaps, in order to come out from the statement made in the cross examination, an attempt was made by the Public Prosecutor for the purpose of recalling the said witness for further cross examination, but, the said request was rejected by the learned Magistrate.

#. Considering the evidence of the complainant, especially, considering the cross examination of the complainant, in my view, the order of acquittal is not required to be interfered with by this Court in view of certain statements made by the complainant during the cross examination. Mr.Adhvaryu, at this stage, submitted that the matter may be remanded to the learned Magistrate, so that, the complainant may be allowed to clarify the aforesaid statements made in the cross examination. However, no such permission can ever be granted. Even otherwise, the alleged offence is of January 1986 and about more than 17 years have passed and this being an acquittal appeal, the order passed by the learned Magistrate, acquitting the accused, cannot be easily set aside by this Court.

#. Considering the aforesaid aspects, in my view, the order of acquittal is not required to be interfered with in view of what is stated above. I, therefore, do not find any substance in this appeal, and, hence, the same is dismissed.

(P.B.Majmudar,J)
(pathan)